MEMORANDUM

Agenda Item No. 11(A)(2)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D. and Members, Board of County Commissioners

DATE: October 19, 2004

FROM: George M. Burgess
County Manager

Robert A. Ginsburg
County Attorney

SUBJECT: Execution of Consent Decree and assessment of costs for environmental remediation of FPR Superfund Site

RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing the County Manager to execute a Consent Decree between the United States Environmental Protection Agency and the members of the Florida Petroleum Reprocessors Site PRP Group for the performance of the final remedy at the Florida Petroleum Reprocessors Superfund Site and for payment of the County's assessed share of the cost to implement the remedy in an amount of $359,630.25.

BACKGROUND

In 1997, Miami-Dade County, and numerous other persons, businesses and governmental entities, were notified by the United States Environmental Protection Agency ("EPA") that they were potentially responsible parties ("PRPs") with respect to contamination at a Superfund site located in Davie, Florida. The contaminated site is the former location of Florida Petroleum Reprocessors ("FPR") which was engaged in the business of reprocessing used oil at the site since 1978. Due to extensive leakage and spillage over the years, the site became highly contaminated with hazardous substances.

County departments, like many of the other PRPs, used the services of waste oil haulers several years ago who took the County's waste oil to the FPR site. Under the federal Superfund law the County, as a "generator," is strictly, jointly and severally liable for the cleanup of site contamination. While there are many PRPs for this site, based upon the volumetric information

documented by the EPA, Miami-Dade County is the largest volumetric contributor of waste oil to the site.

As is normally the case in Superfund sites involving numerous PRPs, a PRP group was formed in order to allow the PRPs to work in a coordinated, cost-efficient manner in their collective negotiations with the EPA. The County has actively participated in the PRP Group Steering Committee through its professional staff in the County Attorney's Office and the Department of Environmental Resources Management.

Previously, the PRP Group successfully negotiated administrative orders with the EPA under which it removed all of the tanks and waste oil contents from the abandoned site, removed a large quantity of contaminated shallow soils and substantially completed the removal of deep source soil contamination at the site. During the past six years, the County has contributed $595,380.46 toward the PRP Group's cost for these remedial activities, including payments for EPA oversight, consultant costs and common counsel fees.

The PRP Group has now completed negotiations with the EPA of a Consent Decree for the final remedy at the FPR site. The Consent Decree requires the PRP Group to complete the remediation of the remaining source of contamination through groundwater treatment and monitored attenuation of the off-site groundwater plume. The County's assessed share of the estimated cost of this final remedy is $359,630.25. The PRP Group members will receive a covenant not to sue from E.P.A. for the response costs the agency has incurred to date (approximately $5.5 million) or incurs in the future, as well as protection from contribution actions for response costs by third parties.

In the event that the PRP Group fails to execute the Consent Decree with EPA, then EPA will perform the remedial work itself and then file a cost recovery action against the PRPs, which would include its $5.5 million claim for past response costs. Additionally, it should be noted that historically cleanups performed by the EPA are usually several times more costly than cleanups undertaken by PRP groups.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D. and Members, Board of County Commissioners

DATE: October 19,2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 11(A)(2)

Please note any items checked.

_____	**"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**
_____	**6 weeks required between first reading and public hearing**
_____	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
_____	**Statement of fiscal impact required**
_____	**Bid waiver requiring County Manager's written recommendation**
_____	**Ordinance creating a new board requires detailed County Manager's report for public hearing**
_____	**Housekeeping item (no policy decision required)**
_____	**No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(2)
10-19-04

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF CONSENT DECREE WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA) AND THE PAYMENT OF $359,630.25 FOR THE ENVIRONMENTAL REMEDIATION OF THE FLORIDA PETROLEUM SUPERFUND SITE

WHEREAS, in 1997 the United States Environmental Protection Agency ("EPA") identified Miami-Dade County, as well as numerous other persons, businesses and governmental entities, as "potentially responsible parties" ("PRPs") under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or Superfund") for environmental damages at the Florida Petroleum Reprocessors ("FPR") Site; and

WHEREAS, the County and many other PRPs organized themselves as the FPR Site PRP Group in order to pool their resources and collectively negotiate with the EPA regarding the most cost-effective cleanup of the FPR Site; and

WHEREAS, as the largest waste oil contributor to the site, Miami-Dade County is a member of the PRP Group's Steering Committee and has been actively involved in the EPA negotiations and remedial efforts at the site through the professional staff of the County Attorney's Office and the Department of Environmental Resources Management; and

WHEREAS, the PRP group has successfully undertaken substantial remedial work at the FPR site, including both shallow and deep source soil contamination removal actions, in accordance with administrative orders negotiated with the EPA; and

WHEREAS, the PRP Group has now completed negotiations with the EPA of a Consent Decree for a final remedy at the PFR site; and

WHEREAS, under the PRP Group Organization Agreement, as amended, the County's assessed share of the estimated $1.5 million cost to implement the Consent Decree remedy is $359,630.25; and

WHEREAS, the Board desires to accomplish the purposes outlined in the accompanying memorandum and the Consent Decree, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby authorizes the County Manager to execute the Consent Decree with EPA for remediation of the FPR Superfund Site, designates the County Attorney as the County's authorized agent under the Consent Decree for receipt of service of all matters arising under the decree and approves the payment of the County's assessment under the PRP Group Organization Agreement, as amended, for CD remedial work at the FPR Superfund Site in the amount of $359,630.25.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson
Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorrin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 19th day of October, 2004. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Robert A. Duvall

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

UNITED STATES OF AMERICA Plaintiff, v. U.S. SUGAR CORPORATION, et al. Defendants.

CIVIL ACTION NO. _____

RD/RA CONSENT DECREE

TABLE OF CONTENTS

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the United States Department of Justice ("DOJ") for response actions at the Florida Petroleum Reprocessors ("FPR") Superfund Site ("Site") in Davie, Florida, together with accrued interest and (2) performance of certain response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Florida (the "State") on March 23, 2001, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of Interior and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration on March 26, 2001, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The defendants ("Settling Defendants" and the State of Florida, Department of Transportation ("FDOT")), that have entered into this Consent Decree, do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment, nor do they admit that they are responsible for such releases. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants or FDOT.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 6, 1998, 63 Fed. Reg. 11332.

G. Part of the FPR Site contains the former FPR waste oil reprocessing facility ("FPR Facility"). Operations were conducted at the FPR Facility from 1979 through 1992 under various names, including Barry's Waste Oil, Oil Conservationist, Inc. ("OCI"), FPR, and South Florida Fuels. Operations were generally reported to include the collection of waste oil (e.g., used motor oil, surplus fuels, marine oils and slops, hydraulic oils, aviation oils, and fuels) from local automotive, agricultural, and marine industry. Incoming waste oils were generally filtered, graded according to water content, and stored on-site in large bulk tanks. The waste oil was typically sold as fuel or to other waste oil marketers. Current records indicate that more than 15 million gallons of waste oil were processed at the FPR Facility.

H. Studies conducted by the EPA show that former operations at the FPR Facility have resulted in the contamination of surface and subsurface soils and groundwater by petroleum and volatile organic compounds ("VOCs").

I. In addition to the contaminants that have been released from the FPR Facility, a second source of groundwater contamination is located along the south side of I-595, and east of the Florida Turnpike. This second source is the location of a former junkyard known as Starta Sales & Salvage that operated at the location from 1965 until 1974. Approximately 1,600 junk cars had been stored on the property at one time, with some of the junk cars being dumped into a water-filled borrow pit along the west side of the property. Automobile salvage and service businesses continued to operate at this location until 1984. The former junkyard property was subsequently acquired by the FDOT in 1984 in advance of the construction of I-595 at this location in the late 1980s. FDOT does not admit that the location of the former junkyard known as Starta Sales & Salvage is a source of groundwater contamination.

J. In 1986, solvent-related contaminants were detected in excess of federal and state drinking water standards by the City of Fort Lauderdale, Florida ("City") in water samples obtained from production wells in the southern portion of the current Peele-Dixie Wellfield ("Wellfield"). This prompted a series of investigations by EPA, the State, Broward County, and the City to assess the cause and extent of contamination.

K. The City implemented interim remedial measures consisting of pumping groundwater into unlined pits at the Wellfield.

L. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, in August 1995, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

M. Additionally, in 1994 the City entered into an Administrative Order on Consent ("AOC") with EPA to address the contamination in the Wellfield and constructed an air stripping system to treat contaminated groundwater.

N. In the Spring of 1996, EPA's Emergency Response and Removal program conducted an assessment of the FPR Facility. The abandoned FPR Facility contained 10 aboveground tanks and 24 drums in poor condition, which appeared to contain waste oil and wastewater. While the tanks and drums were within secondary containment areas, these structures had deteriorated. The contents of the tanks and drums were sampled, and the results indicated the presence of VOCs and other hazardous substances. EPA determined that an immediate response action was warranted to address the imminent threat posed by the tanks and drums and to stabilize the facility pending further evaluation. As a result of this action, all of the tanks and an estimated 13,000 gallons of waste oil and 26,000 gallons of wastewater were removed from the Site. This work was completed in 1997 pursuant to an Administrative Order on Consent with U.S. Sugar Corporation.

O. A second round of the removal was conducted at the FPR Facility by the Settling Defendants in 1999, to address the highly contaminated soils ranging from the surface to a depth of approximately 12 feet below ground surface ("bgs"). Contaminants removed included chlorinated VOCs and petroleum-related compounds. Approximately 6,000 tons of soil were removed for off-Site disposal. The excavations were filled in with clean soil.

P. A third round of the removal was started at the FPR Facility by the Settling Defendants in November 2000, to address the documented deep soil contamination and a zone of residual dense nonaqueous-phase liquid ("DNAPL") in the northwestern portion of the FPR Facility at a depth from 34 to 43 feet bgs.

Q. These removal activities were supportive of the remedial measures selected for the Site.

R. EPA completed the field work for the RI for the FPR Site in April 1997, and issued an RI/FS report in June 1998.

S. The RI and FS reports and a Proposed Plan for the FPR Site were first released to the public in June 1998. Initially, EPA proposed to implement Source Remediation and Monitored Natural Attenuation ("MNA"). However, the Proposed Plan was met with opposition from the City and the community based upon concerns over the potential threat of Site contaminants to the Wellfield and the City's stated plans to increase Wellfield pumping. The Settling Defendants objected to EPA's conceptual site model and denied any responsibility for contamination in the Wellfield. The Settling Defendants also objected to the cost of the remedy. The City, members of the community, and the Settling Defendants objected to the proposed remedy. Given these concerns, EPA did not adopt the preferred remedial alternative in the Proposed Plan and did not issue a Record of Decision ("ROD") for the Site at that time. EPA then began a process of additional Site characterization and evaluation of additional remedial alternatives.

T. After this additional assessment was completed, a second Proposed Plan was issued in June 2000. A notice of availability of this document was published in the *Fort Lauderdale Sun-Sentinel* on June 18, 2000, in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). A public comment period was held from June 20 through August 21, 2000, and a public meeting was held on June 27, 2000. The meeting was attended by representatives of the City, the community, and the Settling Defendants, in addition to many other stakeholders. At this meeting, representatives from EPA and the U.S. Army Corps of Engineers presented a summary of the Proposed Plan and answered questions about the Site and remedial alternatives under consideration. Comments were received from the City, members of the community, the Settling Defendants, and other stakeholders regarding the Proposed Plan. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

U. This Proposed Plan presented the selected remedial action for the FPR Site chosen in accordance with CERCLA, as amended by SARA and, to the extent practicable, the NCP. The final remedial decision for this Site is supported through documentation contained in the administrative record for the Site.

V. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final ROD, executed on March 1, 2001, on which the State of Florida had a reasonable opportunity to review and comment, and to which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments received. (See Appendix A of the ROD).

W. Between 1998 and 2002, EPA engaged in numerous discussions and meetings with representatives from the City regarding the remedy for the Site and the City's plans for the

Wellfield. In January 2002, the City conveyed to EPA its intentions to modify the operation of the Wellfield. Due to the City's stated desire to increase the water supply available for its citizens, while balancing concerns relating to salt water intrusion, the City plans to relocate production wells to the northwest of their current location. Based on the City's Wellfield relocation efforts, the response work already performed by the Group, and the lack of VOC concentrations in the Wellfield above maximum contaminant levels ("MCLs") for the past several years, existing Site related VOC contamination is not likely to migrate northward to impact production wells above MCLs.

X. EPA issued a September 2004 Explanation of Significant Differences ("ESD"), which discusses the collection of groundwater data in the southern portion of the current Wellfield and other areas of the Site. Given the current and planned changes to the Wellfield and decreases in Site contamination, EPA determined that it is necessary to gather additional groundwater data to verify the need for the construction and operation of an air stripper or other system associated with the "Wellfield Protection" component of the ROD (See ROD pages 90-92). During the period of time over which the groundwater data is collected and analyzed, the Wellfield will be sufficiently protected through the use of monitored natural attenuation.

Y. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its Appendices.

Z. In late January and/or early February of 2004, a current Site owner and/or operator conducted unauthorized activities on the Site that entailed breaching of the fencing surrounding the FPR facility property, the abandonment or destruction of approximately seventy (70) groundwater monitoring and injection wells and risers, cutting and removal of sheet piling, placement of one to three feet of fill material throughout the FPR facility property, and parking vehicles and equipment over the facility. The wells and structures that were destroyed were an essential part of the ongoing Superfund Site response activities that the Settling Defendants commenced in 1997, which are scheduled to continue for many years. Such activities have delayed the Settling Defendants' initiation of on-Site remedial action work. EPA plans to conduct Site restoration work to repair the FPR facility property to a condition that will allow remedial action work to proceed and to seek compensation from the parties responsible for the unauthorized Site work.

AA. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedial action selected by the ROD and the work already performed by the Settling Defendants pursuant to Administrative Orders on Consent issued on November 22, 1996, June 15, 1999 (as amended), and August 11, 2000 (as amended) shall constitute response actions taken or ordered by the President.

BB. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants, the Settling Federal Agencies, and the FDOT. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendants, the Settling Federal Agencies, and the FDOT waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants, the Settling Federal Agencies, and the FDOT shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States; the Settling Defendants and their heirs, successors and assigns; the Settling Federal Agencies; and the FDOT. Any change in ownership or corporate, agency, department or other legal status of a Settling Defendant, Settling Federal Agency or the FDOT including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Party's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform each component of the Work as required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday,

or Federal holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 119.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"ESD" shall mean the September 2004 Explanation of Significant Differences issued by EPA, which is attached as Appendix F.

"FDEP" shall mean the Florida Department of Environmental Protection, and any of its successor departments or agencies.

"FDOT" shall mean the State of Florida, Department of Transportation and any of its successor departments or agencies.

"FPR Facility" shall mean the former FPR used oil reprocessing facility.

"FPR Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Future Response Costs" shall mean all costs from the date of lodging, including, but not limited to, direct and indirect costs, that the United States incurs or pays in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 91 of Section XXI. "Future Response Costs" shall not include costs related to the Site Disturbance.

"Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1st of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1st of each year.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work ("SOW").

"Owner Settling Defendant" shall mean the FDOT.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, the Settling Defendants, the Settling Federal

Agencies, and the FDOT.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through the date of lodging, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 11.2.2 - 11.2.7 of the ROD and Section II.C. of the SOW.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on March 1, 2001, by the Director, Waste Management Division, EPA Region 4, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD in accordance with the Performance Standards, the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the documents developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the documents developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendants" shall mean those Parties identified in Appendix D.

"Settling Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix E, which are resolving any claims which have been or could be asserted against them with regard to this Site, as provided in the Consent Decree.

"Site" shall mean the Florida Petroleum Reprocessors Superfund Site, which comprises: the FPR Facility property which formerly contained a waste oil recycling operation approximately one acre in size located at 3211 SW 50th Avenue in Davie, Broward County, Florida, south of Fort Lauderdale; an area along the south side of I-595, and east of the Florida Turnpike, which formerly contained the Starta Sales & Salvage junkyard, which is now owned by the FDOT; and the groundwater contamination originating from these two source areas exclusively, which is documented by the data as depicted in Figures 4-20 and 4-21 of the ROD. At the time of the ROD, this Site covered an area of approximately 870 acres in size and was generally bounded to the north by Peters Road, that divides the northern and southern portion of

the current Peele-Dixie Wellfield, to the east by U.S. Route 441, to the south by Orange Drive, and to the west by the Florida Turnpike. The Site is depicted generally on the map attached as Appendix C.

"Site Disturbance" shall mean the breaching of the fencing surrounding the FPR facility property, destruction and/or abandonment of the approximately seventy (70) groundwater monitoring and injection wells and risers, cutting and removal of sheet piling, placement of fill material throughout the FPR facility property, storing and movement of commercial and industrial equipment on the FPR facility property, and the effects of all such activities on the Site.

"Southern portion of the current Peele-Dixie Wellfield" shall mean that portion of the Site that is bounded to the north by Peters Road, to the south by an area roughly one quarter mile north of the North New River Canal, to the east by U.S. Route 441, and to the west by the Florida Turnpike.

"State" shall mean the State of Florida, Department of Environmental Protection.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made to it in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal Agencies, and any federal natural resources trustee.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Wellfield" shall mean the Peele-Dixie Wellfield as defined by Broward County Wellfield Protection Ordinance or the South Florida Water Management District.

"Work" shall mean all activities the Settling Defendants are required to perform under this Consent Decree, except those activities required by Section XXV (Retention of Records). "Work" shall not include any activities related to the Site Disturbance, including, but not limited to, addressing or remediating the Site Disturbance.

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are (1) to protect public health, welfare and the environment at the Site by the funding, design, and implementation of final response actions at the Site by the Settling Defendants; (2) to reimburse certain response costs of the Plaintiff; and (3) to resolve the claims of Plaintiff against the Settling Defendants and the FDOT as provided in this Consent Decree; and (4) to resolve the claims of the Settling Defendants, the Settling Federal Agencies, and the FDOT which have been or could have been asserted against the United States, one another, and

de minimis and de micromis PRPs with regard to the Site as provided in this Consent Decree.

6. Commitments by Settling Defendants, Settling Federal Agencies, and the FDOT

(a) Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the ESD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by the Settling Defendants and approved by EPA pursuant to this Consent Decree.

(b) The portions of the ROD to be initially financed and performed by the Settling Defendants entail the Source Remediation section of the ROD (See ROD pages 89-90), the Monitored Natural Attenuation section of the ROD (See ROD pages 92-94), and the monitoring of VOC concentrations through a rigorous groundwater monitoring program in the vicinity of the Peele-Dixie Wellfield as set forth in the ROD (See ROD pages 91-92) and ESD.

(c) The implementation of the Wellfield Protection component of the ROD by the Settling Defendants shall only commence following EPA's review of relevant data and then only if EPA determines: (1) that Site contamination will reach the active Wellfield in concentrations which will result in exceedances of MCLs and (2) that, as a result, implementation of the Wellfield Protection component of the ROD is necessary to protect human health and the environment. The Settling Defendants shall collect, analyze, and model groundwater monitoring data as outlined in the SOW. This groundwater monitoring program will include, without limitation, chemical analysis of the chlorinated solvent compounds monitored during the Remedial Investigation and listed in the ROD, as well as other parameters identified by EPA in its guidance on evaluating the effectiveness of MNA.

(d) Settling Defendants shall also reimburse the United States for certain Past Response Costs as set forth in Paragraph 55 and all Future Response Costs as provided in this Consent Decree. The FDOT and the Settling Federal Agencies shall reimburse the EPA Hazardous Substance Superfund as provided in Paragraphs 54 and 58 respectively of this Consent Decree.

(e) The obligations of the Settling Defendants to finance and perform the Work and to pay amounts owed to the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall finance and complete all such requirements. This provision applies only to the extent permitted by Florida law, and shall not constitute a waiver of sovereign immunity beyond the statutory limits of Florida Statutes 768.28.

7. Compliance With Applicable Law. All activities undertaken by the Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits and Location of Work.

(a) As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the

areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-Site requires a federal or state permit or approval, the Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

(b) The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for Work.

(c) This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

(d) Any Party performing Work on property owned or controlled by FDOT shall coordinate with FDOT and comply with FDOT's and the United States Department of Transportation's highway safety requirements. The Party performing Work shall use all reasonable means to perform the Work on property not owned or controlled by FDOT except with respect to Work for the implementation of the Wellfield Protection component of the ROD under State Road 7 north of the North New River Canal. If reasonable means are not available and the Work will not preclude or make economically infeasible the construction, operation, or maintenance of a transportation facility, then the Party performing the Work and FDOT shall coordinate in performance of the Work on property owned or controlled by FDOT so long as the Party performing the Work reimburses FDOT for the costs FDOT incurs as a result of the performance of the Work. In the event of a dispute regarding whether reasonable means are available to perform the Work on property not owned or controlled by FDOT or whether the performance of the Work will preclude or make economically infeasible the construction, operation, or maintenance of a transportation facility, or costs claimed by FDOT due to the performance of the Work, Settling Defendants or FDOT may invoke with EPA the dispute resolution procedures set forth in Section XIX (Dispute Resolution) as to these issues. However, Settling Defendants cannot invoke the Dispute Resolution process directly against FDOT.

9. Notice to Successors-in-Title.

(a) With respect to any property owned or controlled by the Owner Settling Defendant that is located within the area bounded by Peters Road to the north, U.S. Route 441 to the east, Orange Drive to the south, and the Florida Turnpike to the west, within 30 days after the entry of this Consent Decree, the Owner Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Broward County, State of Florida, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on March 1, 2001, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. The notice required by this Paragraph 9 will describe the property as all property owned by the Owner Settling Defendant as identified on the Owner Settling Defendant's official right-of-way maps on file at the Owner Settling Defendant's offices. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant shall record such notice within 10 days of EPA's approval of the notice. The Owner Settling Defendant shall provide EPA with a certified copy of such recorded notice within 30 days of recording such notice.

(b) At least 30 days prior to the conveyance of any interest in property that is identified in the recording requirements of Paragraph 9(a) and that is owned or controlled by the Owner Settling Defendant on the Effective Date or acquired thereafter until the date of the Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50(b) of Section XIV (Certification of Completion) including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Owner Settling Defendant conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements were given to the grantee.

(c) In the event of any such conveyance, an Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. Selection of Supervising Contractor.

(a) All aspects of the Work to be performed by the Settling Defendants pursuant to Sections VI (Performance of the Work by the Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of a Supervising Contractor, the selection of which shall be subject to disapproval by EPA, after a reasonable opportunity for review and comment by the State. Within 10 days after the lodging of this Consent Decree, the Settling Defendants shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be a Supervising Contractor, the Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, the Settling Defendants propose to change a Supervising Contractor, the Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to

proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

(b) If EPA disapproves a proposed Supervising Contractor, EPA will notify the Settling Defendants in writing. Within 30 days of receipt of EPA's disapproval, Settling Defendants shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within 21 days of EPA's authorization to proceed.

(c) If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, the Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Design.

(a) Within 30 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, the Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for the design of the remedy set forth in the portions of the ROD described in Paragraph 6(b), in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 14 days after EPA's issuance of an authorization to proceed, the Settling Defendants shall submit to EPA and the State, a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. If Work is to be done on property owned or controlled by FDOT, the Health and Safety Plan shall also conform to Florida Department of Transportation highway safety requirements.

(b) The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); and (2) a Construction Quality Assurance Plan; and may also include: (i) a treatability study; (ii) a Pre-design Work Plan; (iii) a preliminary design submittal; and (iv) a pre-final/final design submittal. In addition, each Remedial Design Work Plan shall include a schedule for implementation and completion of the Remedial Action Work Plan.

(c) Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, submittal of the Health and Safety Plan for all field activities to EPA and the State, and completion of EPA's Site restoration work

described in Paragraph Z, the Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plans in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, the Settling Defendants shall not commence further Remedial Design activities at the Site prior to the approval of the Remedial Design Work Plan.

(d) If it is required, the preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of additional field sampling and pre-design work; (3) project delivery strategy; (4) preliminary plans, drawings and sketches; (5) required specifications in outline form; and (6) preliminary construction schedule.

(e) If it is required, the pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); and (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards). The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official") to conduct a quality assurance program during the construction phase of the project.

(f) If EPA determines under Paragraph 6(c) that the Wellfield Protection component of the ROD must be implemented, the Settling Defendants shall comply with the provisions of this Paragraph with respect to the Wellfield Protection component. Settling Defendants shall submit the Remedial Design Work Plan for this Work within 30 days of EPA's determination under Paragraph 6(c).

12. Remedial Action.

(a) Within 30 days after the approval of the final design submittal, the Settling Defendants shall submit to EPA and the State a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the portions of the ROD described in Paragraph 6(b) and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the ESD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, the Settling Defendants shall submit to EPA and the State, a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. If Work is to be done on property owned or controlled by FDOT, the Health and Safety Plan shall also conform to Florida Department of Transportation highway safety requirements.

(b) The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) methodology for

implementation of the Operation and Maintenance Plan; (7) tentative formulation of the Remedial Action team; (8) construction quality control plan (by constructor); and (9) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

(c) Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, the Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, the Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

(d) If EPA determines under Paragraph 6(c) that the Wellfield Protection Component of the ROD must be implemented, the Settling Defendants shall comply with the provisions of this Paragraph with respect to the Wellfield Protection Component. Settling Defendants shall submit the Remedial Action Work Plan within 30 days after the approval of the final design submittal required by Paragraph 11.

13. The Settling Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

(a) If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

(b) For the purposes of this Paragraph 14 and Paragraph 50 only, the "scope of the remedy selected in the ROD" is: (1) Source Remediation at the FPR Facility as set forth in the ROD, (2) Monitored Natural Attenuation as set forth in the ROD, and (3) Wellfield Protection as set forth in the ROD and ESD. The collection and treatment of contaminated groundwater or the use of other appropriate remedial technologies as set forth in the ROD (see pages 90-92) will be required only if EPA determines that relevant data demonstrate that Site contamination will reach the Wellfield in concentrations which will result in exceedances of MCLs, and (2) as a result EPA determines that implementation of the Wellfield Protection component of the ROD is necessary to protect human health and the environment.

(c) If the Settling Defendants object to any modification determined by EPA to be necessary pursuant to Paragraph 14, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 69 (record review). The SOW and/or related work plans

shall be modified in accordance with final resolution of the dispute.

(d) Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

(e) Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. (a) Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(1) The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and the state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 16(a) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

(b) Before shipping any Waste Material from the Site to an off-site location, the Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Settling Defendants shall only send Waste Material from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

17. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select

further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 87 or Paragraph 88 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 87 or Paragraph 88 of Section XXI (Covenants by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 69 (record review).

21. Submissions of Plans. If the Settling Defendants are required to perform further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by the Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to the Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, the Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPPs and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the Settling Defendants in implementing this Consent Decree. In addition, the Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program

Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Defendants shall notify EPA and the State not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

24. Settling Defendants shall submit to EPA and the State two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other federal or state applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants or the Owner Settling Defendant, such party shall:

(a) commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA and its contractors and Settling Defendants and their contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(i) Monitoring the Work;

(ii) Verifying any data or information submitted to the United States or the State;

(iii) Conducting investigations relating to contamination at or near the Site;

(iv) Obtaining samples;

(v) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(vi) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(vii) Implementing the Work pursuant to the conditions set forth in Paragraph 91of this Consent Decree;

(viii) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

(ix) Assessing the Settling Defendants' compliance with this Consent Decree;

(x) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree; and

(xi) Placing such piping systems by directional boring or jack and bore under State Road 7 north of the North New River Canal as are necessary for the implementation of the Wellfield Protection component of the ROD;

(b) Commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree, except where expressly provided below:

(i) If any portion of Projects FM No.: 409354-1, FM No.: 411189-2, FM No. 407481-2, FM 231739-3, FM 231727-1, FPID No.: 406094-1, and FPID No.: 406095-4, including all subsequent phases, interferes with or adversely affects the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree, that portion may proceed only insofar as it is constructed according to concept and design plans reviewed and approved by EPA on March 31, 2004.

(ii) If FDOT proposes to construct or relocate any portion of a state highway, other than the projects listed above, within the area from Peters Road to the north, U.S. Route 441 to the east, Orange Drive to the south, and the Florida Turnpike to the west, FDOT shall provide to EPA design plans of such project. The project may not begin unless EPA determines that it will not interfere with nor adversely affect the implementation, integrity, or protectiveness of the Wellfield Protection portion of remedial measures to be performed pursuant to this Consent Decree (Wellfield Work) and that it will not adversely affect the implementation, integrity, or protectiveness of the Monitored Natural Attenuation portion of the remedial measures to be

performed pursuant to this Consent Decree (MNA Work). EPA shall use best efforts to make this determination within 90 days from submission of design plans by FDOT. If EPA has not made this determination within 90 days, FDOT may invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) as to whether EPA has used best efforts. If, once an approved project is undertaken, it interferes with or adversely affects the implementation, integrity, or protectiveness of the Wellfield Work, or it adversely affects the implementation, integrity or protectiveness of the MNA Work, the project may proceed only insofar as it is constructed according to the plans submitted to EPA.

(iii) If FDOT decides to respond to an emergency, as that term is defined by Section 252.34(3), Florida Statutes, within the area described in subparagraph (b)(ii), FDOT shall notify EPA and the Settling Defendants within 24 hours of the first Working Day after deciding to respond to the emergency. If EPA determines that the proposed emergency action could adversely affect the implementation, integrity, or protectiveness of any of the remedial measures, EPA may seek immediate judicial review of the proposed emergency action. In any such action, FDOT shall have the burden to show that there is an emergency; the proposed project is necessary to respond to the emergency; and there are no reasonable means available to avoid interfering with the remedial measures.

(iv) At any time, if FDOT's implementation of any portion of a project encompassed in this subparagraph (b) causes the cost of the remedial measures to increase, then FDOT is obligated to reimburse EPA and the Settling Defendants for such cost increases incurred by them.

(v) The only issues arising under this subparagraph (b) for which FDOT may invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) are cost increases claimed by EPA and/or Settling Defendants due to FDOT's actions, EPA's failure to make a determination under subparagraph (b)(ii), and EPA's determination under subparagraph (b)(ii) that an FDOT project will adversely affect the implementation, integrity, or protectiveness of the MNA Work. The standard of review for disputes as to the effect on the MNA work is set forth in Paragraph 69(d).

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, the Settling Defendants shall use best efforts to secure from such persons:

(a) an agreement to provide access thereto for the Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree; and

(b) an agreement, enforceable by the Settling Defendants and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree.

28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water

use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. However, Settling Defendants will not be required to make payments under Paragraph 27 for access to property owned by the City or to the current owner of the FPR Facility property. If any access or land/water use restriction agreements required by Paragraphs 27(a) or 27(b) of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, the Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that the Settling Defendants have taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist the Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, the Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other federal or state applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, the Settling Defendants shall submit to EPA and the State two copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by the Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, in a form that may include, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that the Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling

Defendants pursuant to Paragraph 51(b) of Section XIV (Certification of Completion). If requested by EPA, the Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

32. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that the Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), the Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 4, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within 20 days of the onset of such an event referred to in Paragraph 33, the Settling Defendants shall furnish to Plaintiff a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, the Settling Defendants shall submit a report setting forth all actions taken in response thereto.

35. Settling Defendants shall submit two copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit two copies of all such plans, reports and data to the State. Upon request by EPA, the Settling Defendants shall submit in electronic form all portions of any report or other deliverable the Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

36. All reports and other documents submitted by the Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document the Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the Settling Defendants at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an

acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), the Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

39. Resubmission of Plans.

(a) Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), the Settling Defendants shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

(b) Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), the Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

41. If upon resubmission, a plan, report, or other item is disapproved or modified by EPA due to a material defect, the Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

43. Within 20 days of lodging this Consent Decree, the Settling Defendants, the State, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinators shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

45. EPA's Project Coordinator and the Settling Defendants' Project Coordinators will meet on a monthly basis, unless a different schedule is deemed appropriate by EPA's Project Coordinator.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

46. Within 60 days of entry of this Consent Decree, the Settling Defendants shall establish and maintain financial security for the Site work in the amount of $2,200,000 in one or more of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit equaling the total estimated cost of the Work;

(c) A trust fund;

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or

(e) A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

47. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 46(d) of this Consent Decree, the Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R.

Part 264.143(f). If the Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 46(d) or 46(e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, the Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 46 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

48. If the Settling Defendants can show that the estimated cost to complete the remaining Site Work has diminished below the amount set forth in Paragraph 46 above after entry of this Consent Decree, the Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, the Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

49. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, the Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

50. Completion of the Remedial Action.

(a) Within 90 days after the Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, the Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by the Settling Defendants, EPA, and the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinators shall state that the Site Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false

> information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify the Settling Defendants in writing of the activities that must be undertaken by the Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require the Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD", as that term is defined in Paragraph 14(b). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

(b) If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to the Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants by Plaintiff). Certification of Completion of the Remedial Action shall not affect the Settling Defendants' other obligations under this Consent Decree.

51. Completion of the Work.

(a) Within 90 days after the Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, the Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by the Settling Defendants, EPA, and the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, the Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with

this Consent Decree, EPA will notify the Settling Defendants in writing of the activities that must be undertaken by the Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require the Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14(b). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

(b) If EPA concludes, based on the initial or any subsequent request for Certification of Completion by the Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Settling Defendants shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region 4 at **(404) 562-8200**. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that the Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, the Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State, a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS

54. Payments by FDOT.

a. Within 30 days of the effective date of this Consent Decree, FDOT shall pay to the EPA Hazardous Substance Superfund $500,000. The state warrant shall be made payable to the "EPA Hazardous Substance Superfund" referencing USAO File Number

_____, EPA Site/Spill ID Number A416, and DOJ Case Number 90-11-2-1069 and shall be sent to the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Florida following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The Federal Tax Identification number to be used to make this payment to the EPA Hazardous Substance Superfund is 520852695.

b. At the time of payment, the FDOT shall send notice that such payment has been made to the United States, to EPA, and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by FDOT pursuant to Subparagraph 54.a shall be deposited in the FPR Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. In the event that FDOT's payment required by Paragraph 54.a. is not made within 30 days of the effective date of this Consent Decree, FDOT shall pay Interest on the unpaid balance at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Consent Decree and accruing through the date of the payment.

55. Payments by Settling Defendants.

a. Within 30 days of the Effective Date, Settling Defendants shall pay to EPA $71,682.61 in payment of their share of Past Response Costs. Settling Defendants shall make the payment required by this Paragraph by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, EPA Site/Spill ID Number A416, and DOJ Case Number 90-11-2-1069. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Florida, Southern Division following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. Also, except as provided in this subparagraph, Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send the Settling Defendants a bill requiring payment that includes a SCORPIOS report which includes direct and indirect costs incurred by EPA and its contractors, and a DOJ cost summary which reflects costs incurred by DOJ and its contractors, if any. Settling Defendants shall make all payments within 30 days of the Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 56. Settling Defendants shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number A416, and DOJ Case Number 90-11-2-1069. Settling Defendants shall send the check to:

U.S. EPA, Region 4

Superfund Accounting

Attn: Collection Officer in Superfund

P.O. Box 100142

Atlanta, GA 30384

c. At the time of each payment, the Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

d. The total amount to be paid by Settling Defendants pursuant to Subparagraphs 55.a and 55.b shall be deposited in the FPR Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

56. Settling Defendants may contest payment of any Future Response Costs under Paragraph 55 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 55. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Florida and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 55. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 55; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

57. In the event that the payments required by Paragraph 55(a) are not made within 30 days of the Effective Date or the payments required by Paragraph 55(b) are not made within 30 days of the Settling Defendants' receipt of the bill, the Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall

begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of the Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 72. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 55.

58. Payments by Settling Federal Agencies.

a. (i) As soon as reasonably practicable after the effective date of this Consent Decree, and consistent with Subparagraph 58(a)(ii), the United States, on behalf of the Settling Federal Agencies, shall pay to the EPA Hazardous Substance Superfund $1,289,064. Of this amount, $35,090.07, shall be paid on behalf of the United States Postal Service.

(ii) If the payment to the EPA Hazardous Substances Superfund required by this subparagraph is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues related to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

b. The total amount to be paid by the Settling Federal Agencies pursuant to Subparagraph 58.a shall be deposited in the FPR Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

c. In the event that the Settling Federal Agencies' payment required by Paragraph 58 is not made within 30 days of the effective date of this Consent Decree, Interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Consent Decree and accruing through the date of the payment.

d. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XVII. INDEMNIFICATION AND INSURANCE

59. Settling Defendants' Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of the Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Settling Defendants, their

officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of the Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of the Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of the Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants, nor any such contractor shall be considered an agent of the United States. This provision applies only to the extent permitted by Florida law, and it shall not constitute a waiver of sovereign immunity beyond the statutory limits of Florida Statutes § 768.28.

b. The United States shall give the Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 59, and shall consult with the Settling Defendants prior to settling such claim.

60. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of the Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

61. No later than 15 days before commencing any on-site Work, the Settling Defendants, with the exception of self-insured governmental entities, shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 50(b) of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of $2,000,000 dollars, combined single limit, and automobile liability insurance with limits of $1,000,000 dollars, combined single limit, naming the United States as an additional insured. The Settling Defendants who are self-insured government entities shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action, a certificate evidencing self-insurance coverage for comprehensive general liability and automobile liability, in the amount of One Hundred Thousand Dollars ($100,000) per person and Two Hundred Thousand Dollars ($200,000) per incident or occurrence, and Worker's Compensation insurance covering all employees in accordance with Chapter 440 Florida Statutes. In the event the Legislature should change governmental entities' exposure by Statute above or below the sums insured against, the Settling Defendants who are governmental entities shall provide insurance to the extent of that exposure. In addition, for the duration of this Consent Decree, the Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations

regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of the Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, the Settling Defendants shall provide to EPA certificates of such insurance and upon request a copy of each insurance policy. Settling Defendants shall resubmit such certificates each year on the anniversary of the Effective Date. If the Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, the Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

62. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by the Settling Defendants, or of the Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

63. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 4, within 24 hours of when the Settling Defendants first knew that the event might cause a delay. Within 7 days thereafter, the Settling Defendants shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which the Settling Defendants, any entity controlled by the Settling Defendants, or the Settling Defendants' contractors knew or should have known.

64. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure

event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

65. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Defendants complied with the requirements of Paragraphs 62 and 63, above. If the Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by the Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

66. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants or the FDOT that have not been disputed in accordance with this Section.

67. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event the dispute is raised by a party to the Consent Decree other than EPA, the Notice of Dispute shall be sent to EPA, with copies to the other parties. By the end of the informal negotiating period, EPA shall advance a position in a dispute involving any party.

68. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 7 days after the conclusion of the informal negotiation period, the Settling Defendants or the FDOT invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants or the FDOT. The Statement of Position shall specify the Settling Defendants' or the FDOT's position as to whether

formal dispute resolution should proceed under Paragraph 69 or Paragraph 70.

b. Within 30 days after receipt of the Settling Defendants' or the FDOT's Statement of Position, EPA will serve on the Settling Defendants or the FDOT its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 69 or 70. Within 7 days after receipt of EPA's Statement of Position, the Settling Defendants or the FDOT may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants or the FDOT as to whether dispute resolution should proceed under Paragraph 69 or 70, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants or the FDOT ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 69 and 70.

69. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by the Settling Defendants or the FDOT regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 69(a). This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 69(c) and 69(d).

c. Any administrative decision made by EPA pursuant to Paragraph 69(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants or the FDOT with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Settling Defendants' or the FDOT's motion.

d. In proceedings on any dispute governed by this Paragraph, the Settling Defendants or the FDOT shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant

to Paragraph 69(a).

70. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of the Settling Defendants' or the FDOT's Statement of Position submitted pursuant to Paragraph 68, the Director of the Waste Management Division, EPA Region 4, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendants or the FDOT unless, within 10 days of receipt of the decision, the Settling Defendants or the FDOT file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the Settling Defendants' or the FDOT's motion.

b. Notwithstanding Paragraph U of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

71. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 80. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

72. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 73 and 74 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by the Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

73. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 73(b):

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$2,000	15th through 30th day

$5,000	31st day and beyond

b. Compliance Milestones.

Compliance milestones shall include all work related activities with respect to the start and completion of work plans, designs and field activities. A detailed schedule including milestone activities and due dates shall be provided in the RD and RA work plans.

74. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th day
$1,000	15th through 30th day
$1,500	31st day and beyond

75. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 91 of Section XXI (Covenants by Plaintiff), the Settling Defendants shall be liable for a stipulated penalty in the amount of $750,000.

76. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies the Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Waste Management Division, EPA Region 4, under Paragraph 69(b) or 70(a) of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that the Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

77. Following EPA's determination that the Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA shall give the Settling Defendants written notification of the same and describe the noncompliance. EPA shall send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of when EPA has notified the Settling Defendants of a violation.

78. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of

the penalties, unless the Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to: "EPA Hazardous Substances Superfund," shall be mailed to Attn: Superfund Accounting, P.O. Box 100142, Atlanta, GA 30384, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID A416, the DOJ Case Number 90-11-2-1069, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions).

79. The payment of penalties shall not alter in any way the Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

80. Penalties shall continue to accrue as provided in Paragraph 76 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, the Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, the Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to the Settling Defendants to the extent that they prevail.

81. If the Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 78.

82. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of the Settling Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

83. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree against the Settling Defendants.

XXI. COVENANTS BY PLAINTIFF

84. In consideration of the response actions that will be performed by the Settling Defendants and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 87, 88, and 90 of this Section, the United States covenants not to sue or to take administrative action against the Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 55(a) of Section XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50(b) of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

85. In consideration of the payment that will be made by the FDOT under the terms of Paragraph 54 of Section XVI (Payment For Response Costs) of the Consent Decree and the performance of FDOT's other obligations provided by the terms of the Consent Decree, and except as specifically provided in Paragraphs 87, 88 and 90 of this Section, the United States covenants not to sue or to take administrative action against the FDOT pursuant to Sections 106 and 107(a) of CERCLA, relating to the Site. Except with respect to future liability, these covenants not to sue which include, but are not limited to, not requiring the FDOT to perform the work described in Paragraph 6(a) through 6(c), shall take effect upon the receipt by EPA of the payments required by Paragraph 54 of Section XVI (Payments For Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50(b) of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by the FDOT of its obligations under this Consent Decree. These covenants not to sue extend only to the FDOT and do not extend to any other person.

86. In consideration of the payments that will be made by the Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 87, 88, and 90 of this Section, EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, EPA's covenant shall take effect upon the receipt of the payments required by Paragraph 58 of Section XVI (Payments for Response Costs). With respect to future liability, EPA's covenant shall take effect upon Certification of Completion of the Remedial Action by EPA pursuant to Paragraph 50(b) of Section XIV (Certification of Completion). EPA's covenant is conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenant extends only to the Settling Federal Agencies and does not extend to any other person.

87. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendants and the FDOT, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies:

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

1. conditions at the Site, previously unknown to EPA, are discovered, or

2. information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action, performed under Paragraphs 6(b) and/or 6(c) is not protective of human health or the environment. Provided, however, that conditions and/or information triggering the implementation of the Wellfield Protection component of the ROD under Paragraph 6(c) shall not constitute such conditions and/or information described in subparagraph 87(b).

88. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Settling Defendants and the FDOT, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies:

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

1. conditions at the Site, previously unknown to EPA, are discovered, or

2. information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

89. For purposes of Paragraph 87, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ESD was signed and set forth in the ROD, the ESD for the Site or the administrative record supporting the ROD or the ESD. For purposes of Paragraph 88, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the ROD and the ESD for the Site, the administrative record supporting the ROD or the ESD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

90. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendants and the FDOT; and EPA and the federal natural resources trustees reserve, and this Consent Decree is without prejudice

to, all rights against the Settling Federal Agencies, with respect to all matters not expressly included within covenants by Plaintiff. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the Settling Defendants and the FDOT, and EPA and the federal natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all other matters, including, but not limited to:

a. claims based on a failure by the Settling Defendants, the FDOT or the Settling Federal Agencies to meet a requirement of that party under this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon the Settling Defendants' ownership or operation of the Site, or the FDOT's operation of the Site, or upon the Settling Defendants' or the FDOT's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants and the FDOT;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

g. Except as to the Settling Federal Agencies and the FDOT, liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans) or sought pursuant to Paragraph 87 (United States' Pre-certification Reservations).

91. Work Takeover In the event EPA determines that the Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 69, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that the Settling Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

92. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING PARTIES

93. Covenants by Settling Defendants. The Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the FDOT with respect to the

Site or this Consent Decree. Notwithstanding any provision to the contrary in Paragraph 106, these covenants not to sue shall not apply in the event that the United States brings a cause of action against or issues an order to the Settling Defendants pursuant to the reservations set forth in Paragraphs 87, 88, 90 (b), 90 (c), or 90 (d), and/or requires further response actions under Paragraph 20, but only to the extent that the Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation. By entry into this Consent Decree, FDOT does not waive or relinquish any right, defense or claim of immunity which it has against the Settling Defendants under the Eleventh Amendment of the Constitution of the United States of America.

94. Covenants by FDOT. FDOT hereby covenants not to sue and agrees not to assert any claims or causes of action against Settling Defendants with respect to the Site or this Consent Decree. Notwithstanding any provision to the contrary in Paragraph 106, these covenants not to sue shall not apply in the event that the United States brings a cause of action against or issues an order to FDOT pursuant to the reservations set forth in Paragraphs 87, 88, 90 (b), 90 (c), and/or 90 (d), but only to the extent that FDOT's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

95. Covenant Not to Sue by Settling Defendants and FDOT. Subject to the reservations in Paragraph 96, the Settling Defendants and the FDOT hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of Florida Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

96. Except as provided in Paragraph 101 (Waiver of Claims Against De Micromis Parties), Paragraph 102 (Waiver of Claims Against *De Minimis* Parties), and Paragraph 109 (waiver of Claim-Splitting Defenses), and notwithstanding any provision to the contrary in Paragraph 106, the covenants not to sue in Paragraph 95 shall not apply in the event that the United States brings a cause of action or issues an order, pursuant to the reservations set forth in Paragraphs 87, 88, 90 (b), 90 (c) or 90 (d), and/or requires further response actions under Paragraph 20, but only to the extent that the Settling Defendants' and/or the FDOT's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

97. Covenant by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to

the Site or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

98. Except as provided in Paragraph 101 (Waiver of Claims Against De Micromis Parties), Paragraph 102 (Waiver of Claims Against *De Minimis* Parties), and Paragraph 109 (waiver of Claim-Splitting Defenses), the covenant not to sue in Paragraph 97 shall not apply in the event that EPA or the Federal Natural Resources Trustees assert rights against the Settling Federal Agencies, pursuant to the reservations set forth in Paragraphs 87, 88, 90 (b), 90(c), or 90(d), but only to the extent that the Settling Federal Agencies' claims arise from the same response action, response costs, or damages that EPA or the Federal Natural Resources Trustees are seeking pursuant to the applicable reservation.

99. The Settling Defendants and the FDOT reserve, and this Consent Decree is without prejudice to: (a) claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; and (b) notwithstanding any provision to the contrary in Paragraph 102, contribution claims against the Settling Federal Agencies in the event any claim is asserted by the United States against the Settling Defendants or FDOT under the authority of or under Paragraphs 87, 88, 90(b), 90(c), or 90(d) of Section XXI (Covenants by Plaintiff), and/or further response actions are required under Paragraph 20, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against the Settling Defendants or FDOT respectively.

100. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

101. Settling Defendants, the Settling Federal Agencies, and the FDOT agree not to assert any claims and to waive all claims or causes of action that they may have for all CERCLA matters relating to the Site, including for contribution, against any person where the person's liability to the Settling Defendants, the Settling Federal Agencies, and/or the FDOT with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. All or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such

person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant, Settling Federal Agency, or the FDOT may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendant, Settling Federal Agency, or the FDOT. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

(a) that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

(b) that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

102. Settling Defendants, the Settling Federal Agencies, and the FDOT agree not to assert any claims and to waive all claims or causes of action that they may have for all CERCLA matters relating to the Site, including for contribution, against any person that enters into or signs a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant, Settling Federal Agency, or the FDOT may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant, Settling Federal Agency, or the FDOT.

103. Settling Defendants, the Settling Federal Agencies, and the FDOT agree not to assert any claims and agree to waive all claims or causes of action that they may have for contribution against any person that sent more than 10,000 gallons of waste oil to the Site and has not entered into or signed a final CERCLA §§106 and 107(a), 42 U.S.C. §§ 9606 and 9607(a), settlement with EPA with respect to the Site as of the Effective Date. This waiver can be nullified upon the written consent of EPA. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant, Settling Federal Agency, or the FDOT may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant, Settling Federal Agency, or the FDOT.

104. Settling Defendants, the Settling Federal Agencies, and the FDOT retain the right to assert any claim and cause of action against the former and current FPR Facility owners or operators with respect to the Site, with the exception of those that are signatories to this consent decree.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

105. Except as provided in Paragraph 101 (Waiver of Claims Against De Micromis Parties) and Paragraph 102 (Waiver of Claims Against *De Minimis* Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 101 (Waiver of Claims Against De Micromis Parties), Paragraph 102 (Waiver of Claims Against *De Minimis* Parties), and Paragraph 103, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

106. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants, the Settling Federal Agencies and the FDOT are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person, including the City of Fort Lauderdale, Florida, relating to the Site. For the Settling Defendants and the FDOT, the "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States asserts rights against the Settling Defendants or the FDOT, respectively, coming within the scope of such reservations. For the Settling Federal Agencies, the "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that EPA and/or the federal natural resources trustees assert rights against the Settling Federal Agencies coming within the scope of such reservations.

107. The Settling Defendants, the Settling Federal Agencies, and the FDOT agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

108. The Settling Defendants and the FDOT also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, the Settling Defendants and the FDOT shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

109. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the Settling Defendants, the Settling Federal Agencies, and the FDOT shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have

been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants by Plaintiff).

110. If the liability of Barry Paul, Barry's Waste Oil Service, and/or Oil Conservationists, Inc. to the United States with respect to the Site is resolved either through settlement or judgment, the Settling Defendants shall share in the proceeds of such settlement or judgment as provided in this Paragraph. The Settling Defendants shall receive the first $150,000 of any payment. Then, the Settling Defendants shall receive 50% of the proceeds beyond the first $150,000, provided that the Settling Defendants shall not receive more than $300,000, including the first $150,000. For the distribution of the proceeds to the Settling Defendants, the Settling Defendants shall select either an escrow account or Disbursement Special Account conforming to EPA guidelines or, if agreed upon by the Settling Defendants and the United States, another lawful mechanism.

XXIV. ACCESS TO INFORMATION

111. Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

112. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified the Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to the Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by the Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

113. No claim of confidentiality shall be made with respect to any data, including, but

not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

114. Until 7 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 51(b) of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

115. At the conclusion of this document retention period, the Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, the Settling Defendants shall deliver any such records or documents to EPA or the State. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

116. Each Settling Defendant and the FDOT hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

117. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 104(e)

and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

118. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Settling Defendants, and the FDOT, respectively.

As to the United States:

As to U.S. DOJ:

Bruce Gelber
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-1069

As to EPA:

Winston A. Smith, Director
Waste Management Division
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

Brad Jackson
Remedial Project Manager
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303
Phone: (404) 562-8925, Fax: (404) 562-8896

As to Regional Financial Management Officer:

Paula V. Batchelor
U.S. Environmental Protection Agency
Region 4
CERCLA Program Services Branch
Waste Management Division
Atlanta Federal Center

61 Forsyth Street, SW
Atlanta, GA 30303

As to the State of Florida:

Aaron Cohen, State Project Coordinator
Florida Department of Environmental Protection
Hazardous Waste Cleanup Section
2600 Blairstone Road, Room 368D
Tallahassee, FL 32399-2400

As to the Settling Defendants:

Matthew P. Coglianese, Esq.
Bilzin Sumberg Baena Price & Axelrod
200 South Biscayne Boulevard, Suite 2500
Miami FL 33131
Phone: (305) 350-2404, Fax: (305) 351-2284

Don Miller
Golder Associates, Inc.
Settling Defendants' Project Coordinator
8933 Western Way, Suite 12
Jacksonville, FL 32256
Phone: (904) 363-3430, Fax: (904) 363-3445

As to the Florida Department of Transportation:

Roger B. Wood, Esq.
Office of the General Counsel
Florida Department of Transportation
605 Suwannee Street, M.S. 58
Tallahassee, FL 32399-0458
Phone: (850) 414-5385, Fax: (850) 414-5264

XXVII. EFFECTIVE DATE

119. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

120. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants, the Settling Federal Agencies, and the FDOT for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

121. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.
"Appendix B" is the SOW.
"Appendix C" is a map of the Site.
"Appendix D" is the complete list of the Settling Defendants.
"Appendix E" is the complete list of the Settling Federal Agencies
"Appendix F" is the ESD.

XXX. COMMUNITY RELATIONS

122. Settling Defendants shall propose to EPA and the State their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA, the Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

XXXI. MODIFICATION

123. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

124. Except as provided in Paragraph 14 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, the Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

125. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

126. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants, the Settling Federal Agencies, and the FDOT consent to the entry of this Consent Decree without further notice.

127. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

128. Each undersigned representative of a Settling Defendant and the FDOT to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

129. Each Settling Defendant, Settling Federal Agency, and the FDOT hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants, the Settling Federal Agencies, and the FDOT in writing that it no longer supports entry of the Consent Decree.

130. Each Settling Defendant and the FDOT shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants and the FDOT hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that the Settling Defendants and the FDOT need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

131. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

132. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants, the Settling Federal Agencies, and the FDOT. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2004.

_____

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. U.S. Sugar Corporation, et al., relating to the Florida Petroleum Reprocessors Superfund Site.

FOR THE UNITED STATES OF AMERICA

_____
Date

_____
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

_____
Date

_____
AMY R. GILLESPIE
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

_____
Date

_____
Assistant United States Attorney
Southern District of Florida
Office of the United States Attorney
500 East Broward Blvd., Seventh Floor
Fort Lauderdale, FL 33394

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. U.S. Sugar Corporation, et al., relating to the Florida Petroleum Reprocessors Superfund Site.

Date

J. I. PALMER, JR.
Regional Administrator
U.S. Environmental Protection Agency,
Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

Date

RUDOLPH C. TANASIJEVICH
Associate Regional Counsel
U.S. Environmental Protection Agency,
Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. U.S. Sugar Corporation, et al., relating to the Florida Petroleum Reprocessors Superfund Site.

FOR _____

_____
Date

Signature: _____

Name (print): _____

Title: _____

Address: _____
_____
_____
_____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____

Title: _____

Address: _____
_____
_____
_____

Ph. Number: _____